

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Federal-State Joint Board on Universal Service)	
)	
TracFone Wireless, Inc.)	CC Docket No. 96-45
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the State of)	
Alabama)	
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the State of)	
Tennessee)	

COMMENTS OF FRONTIER ILECs in ALABAMA and TENNESSEE

The Frontier ILECS operating in Alabama and Tennessee (“Frontier”)¹ respectfully submit these comments regarding the November 9, 2004 petition of TracFone Wireless, Inc. (“TracFone”) for designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Alabama and in the State of Tennessee (“Designation Petition”) as a reseller of other carriers’ facilities-based commercial mobile radio service (“CMRS”) and TracFone’s June 8, 2004 petition requesting that the Commission forbear from applying the section 214(e)(1)(A) requirement that an ETC must provide service in whole or in part using its own facilities (“Forbearance Petition”).

TracFone seeks to be designated as an ETC throughout Alabama and Tennessee in both non-rural and rural telephone company service areas, and asserts that it already provides prepaid

¹ Frontier files these comments on behalf of its three Alabama incumbent local exchange carriers: Frontier Communications of Alabama, LLC, Frontier Communications of Lamar County, LLC and Frontier Communications of the South, LLC and its two Tennessee incumbent local exchange carriers Citizens Telecommunications Company of the Volunteer State LLC and Citizens Telecommunications Company of Tennessee L.L.C. Each of these five ILECs are rural carriers.

CMRS service in every zip code in both states.² Because TracFone seeks to be designated as an ETC throughout a large number of rural telephone company (RTC) study areas, it must demonstrate that it meets the minimum criteria of Section 214(e)(1) and that designating it as an ETC in the RTCs' study areas "is in the public interest."³ Because TracFone has no facilities of its own, its Designation Petition must fail for both rural and non-rural areas unless the Commission forbears from enforcing the facilities requirement of Section 214(e)(1)(A).

The Commission has previously denied forbearance petitions seeking the same relief requested by TracFone. The Commission has determined that it is inconsistent with the express language and intent of the Telecommunications Act to grant a pure reseller ETC status. Moreover, the fact that TracFone has indicated that it seeks ETC status solely for the purpose of receiving Lifeline support does not change the forbearance analysis. The Commission should deny TracFone's Forbearance Petition.

I. The Commission Should Not Forbear From Applying the Statutory Requirement That Any ETC Must Provide Services Using Its Own Facilities or a Combination of Facilities and Resale.

TracFone's Designation Petitions rely entirely on the Forbearance Petition request that the Commission forbear from the requirement contained in 47 U.S.C. § 214(e)(6) that an ETC use its own facilities or a combination of its own facilities and resale of another carriers services to provide service to end users. TracFone fails to satisfy this statutory requirement because it only provides service through resale of facilities of other CMRS carriers. TracFone has explained that it has entered into resale agreements with various CMRS facilities-based providers

² This assertion should be taken with a grain of salt, given the "No Coverage" areas in Alabama and Tennessee shown on the coverage map on TracFone's website. See http://www.TracFone.com/images/covmaps2/1100P_MAP.jpg

³ 47 U.S.C. § 214(e)(2).

and does not directly own or control the facilities it uses to provide service.⁴

Section 10 of the Act allows the Commission to forbear from applying any provision of the Act to a carrier if the Commission finds that (1) enforcement of the provision is not necessary to ensure that charges, practices, classifications, or regulations by, for, or in connection with the carrier are just and reasonable and not unjustly discriminatory; (2) enforcement of the provision is not necessary to protect consumers; and (3) forbearance from applying the provision is consistent with the public interest.⁵ The Commission has previously performed this analysis in the context of the pure resale of services and made it clear that it will not forbear from the facilities-based requirement to allow pure resellers to be eligible to receive ETC status. In the *First Universal Service Order*, the Commission explained: “it is neither in the public interest nor would it promote competitive market conditions to allow resellers” to be designated as ETCs.⁶

More recently in November 2004, the Commission reaffirmed this conclusion in response to a reconsideration request to allow resellers to receive universal service support when they resell services of a facilities-based carrier that does not receive universal service support. In its comments, MSV sought reconsideration of the Commission’s determination that all “pure” resellers of telecommunications service are ineligible for universal service support. MSV argued that not *all* resellers should be barred from receiving support; rather, resellers should be deemed eligible for support when they resell the services of a facilities-based carrier that is not a recipient of universal service subsidies. The Commission rejected these arguments and again concluded that pure resellers can not receive support:

⁴ Alabama Designation Petition at 2, 5; Tennessee Designation Petition at 2, 5.

⁵ 47 U.S.C. § 160(a)(1)-(3).

⁶ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776 (1997) at ¶ 179.

We deny MSV's petition for reconsideration of our determination regarding the eligibility of pure resellers to receive universal service support. MSV's petition does not rely on facts that have not previously been presented to the Commission. Rather, MSV merely wishes to argue its different interpretation of the statute. As the Commission already concluded, the statute expressly mandates that, in order to be eligible for universal service subsidies, a carrier must use its "own facilities" or a combination of its own facilities and another carrier's services in the provision of supported services. Resellers providing resold services from facilities-based carriers do not use their "own facilities" to provide the supported services. As such, pure resellers cannot receive support consistent with this statutory requirement.⁷

As the Commission noted, the Act expressly mandates, that in order to be eligible for universal service subsidies, carriers must use their own facility or a combination of its own facilities and another carrier's services' in the provision of supported services. TracFone has not provided any sufficient basis to distinguish the Commission's two prior rulings or to justify its Forbearance Petition, which is a necessary precondition to its designation as an ETC.

In addition, the fact that TracFone has asserted that it is seeking ETC status solely for the purpose of receiving Lifeline support to provide service to low income consumers does not change the Commission's prior findings regarding forbearance. The Act makes no distinction between ETCs for purposes receiving of low-income support, high cost support or both. If Congress had wanted to eliminate the public interest requirement for obtaining an ETC designation when a carrier intended to provide Lifeline/Link-Up services, it could have done so. It did not. Even if TracFone is only seeking ETC designation in order to receive universal service support from the low-income mechanism, it must comply with the ETC designation requirements to which all carriers are subject. In short, TracFone has failed to demonstrate how its forbearance request is in the public interest. Accordingly, the Commission should deny TracFone's Forbearance Petition underlying its request to be designated as an ETC.

⁷ *Federal-State Joint Board on Universal Service, Order on Reconsideration*, FCC 04-237 (Nov. 29, 2004) at ¶ 9.

II. TracFone Has Failed to Establish That Granting ETC Status Is in the Public Interest.

Section 254(e) of the Federal Telecommunications Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”⁸ Under section 214(e)(2), the Commission may, with respect to an area served by a rural telephone company, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1), including offering service throughout the service area for which designation is received, and the Commission determines that the designation is in the “public interest.”

Because TracFone seeks to be designated as an ETC in several RTCs’ study areas, including Frontier’s study areas, TracFone must demonstrate that it will meet the minimum criteria of section 214(e)(1) of the Communications Act of 1934 and that designating it as an ETC in the RTCs’ study areas “is in the public interest.”⁹ A rigorous public interest examination is required to ensure that designation of a particular applicant as an ETC in a RTC’s study area is in the public interest. As the Commission recognized in the *Virginia Cellular Order*, the public interest analysis is broader than just increased competition. The FCC explained:

We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company’s service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor’s service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC’s ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Virginia Cellular has made on the record in this proceeding. These

⁸ 47 U.S.C. § 254(e).

⁹ 47 U.S.C. § 214(e)(2).

*conditions will ensure that Virginia Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.*¹⁰

As a result, the *Virginia Cellular Order* established the following public interest criteria for consideration of an ETC request in rural areas:

- (1) The benefits of increased competitive choice
- (2) The impact of multiple designations on the Universal Service Fund
- (3) The unique advantages and disadvantages of the competitor's service offering
- (4) Any commitments made regarding quality of telephone service, and
- (5) The competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame

Based on the Commission's findings in the *Virginia Cellular Order*, all carriers seeking ETC status in rural areas must now comply with each of these additional requirements. TracFone's Designation Petition does not satisfy these requirements.

A. Designating TracFone as an ETC Will Not Enhance Competition.

With respect to the TracFone Designation Petition, the benefits of increased competitive choice (criteria # 1) associated with designating TracFone as an ETC are purely illusory. TracFone asserts repeatedly that it competes with the RTCs, but offers no specific facts to demonstrate that it competes with them.¹¹ It provides no facts specific to Frontier's study areas to demonstrate that it competes with Frontier or whether the benefits of competition are realized as a result of its provision of service in Frontier's study areas. Absent such a showing, the Designation Petition must be denied.

Moreover, TracFone's assertion that it competes with Frontier is incorrect. TracFone

¹⁰ See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan. 22, 2004) ("*Virginia Cellular Order*").

¹¹ Alabama Designation Petition at 13; Tennessee Designation Petition at 12-13.

does not compete with Frontier. TracFone provides a service that, at best, is complementary to that offered by Frontier. TracFone's service is not viewed by consumers or by Frontier as a substitute. Frontier and its affiliates have experienced true competitive entry. In those instances, Frontier has experienced a reduction in the number of lines it serves as customers elect to take service from the competitor rather than from Frontier. Frontier has been unable to quantify any similar line loss resulting from TracFone's provision of service. TracFone does not compete with Frontier for the services supported by universal service, and providing it with USF monies will neither increase competition, nor produce the benefits of competition in Frontier's study areas.

B. Allowing Reseller's Like TracFone to Receive Support Undermines the Stability of the Universal Services Fund.

Similarly, a critical review of *Virginia Cellular Order* criteria # 2 regarding the impact of multiple designations on the Universal Service Fund also undermines TracFone's request for ETC designation. Among other things, universal service is intended to ensure that consumers in rural and high-cost areas receive quality services at rates comparable to those charged in urban areas. In many rural study areas, these goals can only be achieved through USF receipts because the costs to serve these areas are so high. Continued, predictable USF receipts are critical to ensuring investment to maintain and to upgrade critical infrastructure in rural study areas. Threats to the universal service mechanism and to receipt of universal service funds by competitive ETCs serving rural areas are important issues to be considered in determining whether designating additional ETCs in an RTCs' study areas is in the public interest.

There is no public interest benefit derived from designating a pure reseller that relies exclusively on the network of other providers as a competitive ETC. For every facilities-based carrier, there may be dozens of resellers of service like TracFone. If the Commission nullifies,

through forbearance, the requirement that ETCs use at least some of their own facilities to provide supported services, the Commission should expect myriad ETC applications requesting universal service funding. In this regard, the Joint Board was absolutely correct in pointing out that designation of wireless carriers as ETCs has an especially pernicious impact on the USF because wireless service does not replace wireline service.¹² Controlling the growth of the universal service fund is necessary to protect consumers. Designating TracFone or any pure reseller as an ETC is inconsistent with this objective given that countless pure resellers would reap the benefits of universal service funding without the corresponding obligation to maintain a network and facilities to provide service.

C. TracFone Can Not Ensure High Quality Service Throughout the Area In Which It Seeks ETC Designation.

With respect to the quality of telephone service (criteria # 4) and the ETC's ability to provide the supported services throughout the designated area with a reasonable time frame (criteria # 5), the TracFone filings fail to show that these criteria will be satisfied if TracFone is designated as an ETC. It is impossible to conceive that TracFone will be able to meet criteria # 4 established by the Commission in the *Virginia Cellular Order* and section 214(e) of the Federal Act associated with providing service throughout the entire area where they seek to be designated as an ETC (criteria # 5).¹³ Conspicuously absent from the Designation Petition is any commitment to provide service beyond the areas where the underlying carriers, which may

¹² *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket 96-45, FCC04J-1 (rel. Feb. 27, 2004) ("Joint Board Recommended Decision") at ¶ 67.

¹³ Pursuant to section 214(e) of the Federal Act, a common carrier designated as an ETC must offer and be capable of providing the services supported by the federal universal service mechanisms throughout the designated service area. 47 U.S.C. § 214(e)(1). The federal rules contain the same requirement that to receive universal service support, an ETC must offer the supported services throughout the service area for which ETC designation is received. 47 C.F.R. 54.201(d)(1).

or may not be an ETC, elect to provide service. Because TracFone is a non-facilities based reseller that can only provide service where its underlying carriers provide service, it is totally unable to expand the availability of its own or any other carrier's service. If a potential customer requests service within the requested ETC area but outside the underlying carriers' CMRS network coverage, TracFone will not expand its coverage in any way. Similarly, because TracFone does not own or control the network or facilities it utilizes to provide service, is not clear how TracFone can satisfy the annual ETC certification requirement that any support it receives will be used for the provision, maintenance, and upgrading of facilities and services for which the support is intended.¹⁴

Designating TracFone as an ETC in Frontier's study areas is not in the public interest. TracFone does not compete with Frontier and is not a new entrant, so designating it as an ETC will not promote or increase competition in Frontier's study area. Nor will it bring the benefits of competition to consumers in Frontier's study area. As a reseller with no control over service quality or CMRS coverage, TracFone will not increase its service territory or improve its service quality. Consequently, the Commission should reject TracFone's request to be designated as an ETC.

Alternatively, the Commission could hold the TracFone ETC application in abeyance. As the Commission is aware, numerous changes to the USF mechanism and changes to the services supported by universal service are being considered.¹⁵ The changes being considered could alter the eligibility requirements for being an ETC and the analytical framework applied in ETC

¹⁴ See 47 U.S.C. § 254(e).

¹⁵ See, e.g., *Federal State Joint Board on Universal Service, Notice of Proposed Rulemaking*, CC Docket 96-45 (rel. June 8, 2004).

designation proceedings, and could significantly change the workings of the USF mechanism. Under the circumstances, the Commission could wait to make a determination of whether TracFone should be an ETC under any modified rules.

III. CONCLUSION

For the reasons stated above, TracFone's request for forbearance and request to be designated as an ETC should be denied.

Respectfully Submitted,

**FRONTIER ILECS in
ALABAMA and TENNESSEE**

A handwritten signature in black ink, appearing to read "Kevin Saville". The signature is fluid and cursive, with the first name "Kevin" and last name "Saville" clearly distinguishable.

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